

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

THE BOARD OF REGENTS, §
THE UNIVERSITY OF TEXAS §
SYSTEM, ON BEHALF OF THE §
UNIVERSITY OF TEXAS AT AUSTIN, §
PLAINTIFF, §

V. §

CAUSE NO. A-06-CA-950-LY

KST ELECTRIC, LTD., §
DEFENDANT. §

ORDER ON REPORT AND RECOMMENDATION

Before the Court is the above styled and numbered cause of action. The Court referred Defendant KST Electric, LTD.'s ("KST") Motion For Summary Judgment On Its Affirmative Defenses Of Laches, Estoppel By Laches And Statute Of Limitations filed November 9, 2007 (Clerk's Document No. 37) and KST's Motion For Summary Judgment On UT's Federal Dilution, Trademark Infringement And Unfair Competition Claims filed November 9, 2007 (Clerk's Document No. 38) to the United States Magistrate Judge for a report and recommendation (Clerk's Document No. 34). *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W. D. Tex. Appx. C, 1(d). After considering the motions, Plaintiff The Board of Regents, The University of Texas System, On Behalf Of The University Of Texas At Austin's ("UT") responses (Clerk's Document Nos. 39 & 40), UT's reply (Clerk's Document No. 45), the parties' summary-judgment proof, the file, and the applicable law the Magistrate Judge signed his Report and Recommendation on February 5, 2008 (Clerk's Document No. 53). By his Report and Recommendation, the Magistrate Judge recommends that this Court deny KST's motion for summary judgment on its affirmative defenses of laches, estoppel by laches, and statute of limitations, and grant the portion of KST's motion for summary

judgment regarding UT's federal trademark dilution claim and deny the remainder of that motion regarding UT's federal trademark infringement and unfair competition claims. The parties received the Report and Recommendation on February 6, 2008 and objections, if any, were due to be filed on or before February 21. *See* Fed R. Civ. P. 72(b) (within ten days after service of report and recommendation, party may serve and file specific written objections to proposed findings and recommendations).

Rather than file objections, UT filed Plaintiff's Response To Report And Recommendation Of The United States Magistrate Judge on February 19, 2008 (Clerk's Document No. 54). By its response, UT disagrees with the portion of the Report and Recommendation that finds and concludes that marks of college sports teams, and particularly those of UT, are excluded from federal dilution protection because their fame is limited to a "niche" market. *See* 15 U.S.C. § 1125(c)(2)(A). Nevertheless, UT's response provides that UT does not object to the recommendation that summary judgment be granted in favor of KST on UT's federal trademark-dilution claim because all of the relief UT seeks is available pursuant to other claims that remain for trial in this cause.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within ten days after being served with a copy of the report and recommendation, thereby securing a *de novo* review by the district court. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendations in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). The Court, having reviewed the entire record and finding no

plain error, will approve and accept the Magistrate Judge's Report and Recommendation.

IT IS ORDERED that the United States Magistrate Judge's Report and Recommendation (Clerk's Document No. 53) filed in this action is hereby **APPROVED AND ACCEPTED**.

IT IS FURTHER ORDERED that KST's Motion For Summary Judgment On Its Affirmative Defenses Of Laches, Estoppel By Laches And Statute Of Limitations filed November 9, 2007 (Clerk's Document No. 37) is **DENIED**.

IT IS FURTHER ORDERED that KST's Motion For Summary Judgment On UT's Federal Dilution, Trademark Infringement And Unfair Competition Claims filed November 9, 2007 (Clerk's Document No. 38) is **GRANTED IN PART** as to UT's federal dilution cause of action and in all other respects is **DENIED**.

IT IS FURTHER ORDERED that UT **TAKE NOTHING** on its federal dilution cause of action.

SIGNED this 25th day of February, 2008.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE